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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**JOINT SUBMISSION IN RESPONSE TO
DKT. 302 RE: SEALING PORTIONS OF
OCT. 20, 2021 SPECIAL MASTER
REPORT**

Referral: Hon. Susan van Keulen, USMJ

1 October 27, 2021

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
6 280 South 1st Street
7 San Jose, CA 95113

8 Re: Joint Submission in Response to Dkt. 302 re: Sealing Portions of October 20, 2021
9 Special Master Report
10 *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (N.D. Cal.)

11 Dear Magistrate Judge van Keulen:

12 Pursuant to Your Honor's October 22, 2021 Redaction Order re: sealing portions of the
13 October 20, 2021 Special Master Report, Plaintiffs and Google LLC ("Google") jointly submit this
14 statement.
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Google respectfully seeks to seal the following portions of the October 20, 2021 Special Master Report (“Report”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including particular internal data sources Google was ordered to search for data relating to Plaintiffs. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Transcript:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
October 20, 2021 Special Master’s Report	Portions highlighted in yellow at: Page 5, line 10; Exhibit A, Page 1, Column “Special Master’s Order”, lines 11-17; 19 Exhibit A, Page 3, Column “Special Master’s Order”, lines 15-16, 20, 38-41, 43	Google

The parties conferred on the proposed redactions to the Report. Plaintiffs take no position and do not oppose sealing the proposed redactions.

I. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of

1 information, including, but not limited to, trade secrets or other confidential research, development, or
 2 commercial information”).

3 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”**
 4 **STANDARD AND SHOULD ALL BE SEALED**

5 Courts have repeatedly found it appropriate to seal documents that contain “business
 6 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good
 7 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
 8 about the operation of [the party’s] products and that public disclosure could harm [the party] by
 9 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014
 10 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
 11 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*
 12 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
 13 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
 14 used to the company’s competitive disadvantage”) (citation omitted).

15 Here, the Report comprises confidential information regarding highly sensitive features of
 16 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 17 information provides details related to various types of Google’s internal identifiers, projects, and data
 18 structures related to its products and services. Such information reveals Google’s internal strategies,
 19 system designs, and business practices for operating and maintaining many of its important services
 20 while complying with legal and privacy obligations.

21 Public disclosure of the above-listed information would harm Google’s competitive standing it
 22 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 23 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is
 24 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
 25 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 26 sensitive business information related to Google’s processes and policies to ensure the integrity and
 27 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 28 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because

1 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
2 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
3 motion to seal as to “internal research results that disclose statistical coding that is not publically
4 available”).

5 Moreover, if publicly disclosed, malicious actors may use such information to seek to
6 compromise Google’s internal systems and data structures. Google would be placed at an increased
7 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*
8 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
9 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
10 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
11 threat is an additional reason for this Court to seal the identified information. The information Google
12 seeks to redact, including internal identifiers, projects, and data structures, is the minimal amount of
13 information needed to protect its internal systems and operations from being exposed to not only its
14 competitors but also to nefarious actors who may improperly seek access to and disrupt these systems
15 and operations. The “good cause” rather than the “compelling reasons” standard should apply but
16 under either standard, Google’s sealing request is warranted.

17 **III. CONCLUSION**

18 For the foregoing reasons, Google respectfully requests that the Court seal the identified portions
19 of the Report.
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Respectfully,

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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission.
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has
concurred in the filing of this document.

Dated: October 27, 2021

By /s/ Andrew H. Schapiro
Andrew H. Schapiro
Counsel on behalf of Google LLC